

# **Representing Yourself before the Administrative Hearing Commission**



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## INTRODUCTION

The Administrative Hearing Commission (abbreviated AHC) has prepared this pamphlet to answer some of the questions you might have regarding your case. Be sure to read this and the copy of the rules which accompanies this pamphlet. It is important to remember that the information presented is general and is intended to cover the usual situation. The explanations in this pamphlet do not cover all of the possible situations that may arise in a case and do not cover all of the rules and laws that might apply. The AHC's Web site, [www.oa.mo.gov/ahc](http://www.oa.mo.gov/ahc), also contains information regarding AHC procedures.

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### 1. SHOULD I HAVE AN ATTORNEY REPRESENT ME BEFORE THE AHC?

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There is no requirement for you to hire an attorney if you are representing only yourself, or representing a business which you own and which is not a corporation or LLC. However, you cannot represent other people and you cannot represent any business which is a corporation or LLC unless you are an attorney.

Even if you are not required to hire an attorney, you may prefer to employ an attorney depending upon the nature of your case, the amount of time you can personally devote to preparation and how much is involved in the final outcome. The choice is yours.

The information in this pamphlet will give you some assistance in handling your case on your own. However, we cannot possibly tell you everything you need to know about the law. If you have any questions please call us at 573-751-2422, and we can give you information about our procedures, but we cannot give you specific legal advice about your case.

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## **2. WHAT HAPPENS NOW THAT I HAVE A CASE WITH THE AHC?**

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Each case is initiated by the filing of a “complaint” with the AHC. Each case has a petitioner and a respondent. The petitioner is the party who filed the complaint, and the respondent is the party against whom the complaint is filed.

Our staff opens an official file for each case and gives that file a name and number. In the future it will be very helpful when contacting us to refer to that case name and number. The file is open to the public and you can see it during business hours, Monday through Friday, 8 A.M. to 5 P.M. You may obtain copies of anything in the file.

If you have filed the complaint, we have served a copy of the complaint on the state agency involved in your dispute and have informed the agency that it has 30 days to file any response. If you are the respondent, you must follow the instructions in our notice of complaint and file an answer.

Our staff schedules hearings and sends each party a notice of the date and time of the hearing.

Any request made by either you or the agency for the AHC to do something in the case is called a “motion.” The AHC makes written rulings on motions. In many cases the AHC will send a letter giving the opposing party a date by which we must receive a response to the motion. Since a motion filed by the agency may result in your losing your case if the AHC grants the agency’s request, it is very important for you to read the motion as soon as you receive it and decide how you want to respond.

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## **3. WHO MAKES THE DECISIONS IN MY CASE?**

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An official called a commissioner acts as an administrative law judge in your case. The commissioner must be a licensed attorney

in the State of Missouri. The AHC is an independent state agency and must be impartial in making its decisions. The commissioner rules on all motions and will make the final decision as to who wins.

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#### **4. MUST I HAVE A HEARING?**

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The AHC does not have a hearing in every case. A case may be settled, decided on stipulated facts, or decided on a written motion. You may contact the attorney for the State to discuss possible settlement of your case. If you reach an agreement with the attorney, this settlement can be reduced to writing and you can dismiss your case.

Even if no settlement can be reached, it is possible for you to enter into a stipulation of facts with the agency. A stipulation is a document stating facts that both you and the state agency agree to. If you use a stipulation, it should cover all the important facts so that the commissioner can fairly and completely decide your case using the stipulation instead of a hearing. The stipulation must be in writing and should be signed by you and the attorney for the agency before being filed with the AHC.

If the agency files a written motion to decide your case without a hearing, the AHC will send you a letter telling you how much time you have to send in a written argument against the motion. Since the granting of such a motion could mean that you lose your case, be sure to read the motion right away. You can request a hearing on the motion, which may be held by a conference telephone call that will include you, the agency attorney and the commissioner. The AHC's rules also allow you to file a motion to have your case decided without a hearing. Consult the AHC's rules for the procedure for these motions.

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**5. WHAT IF A HEARING IS SCHEDULED AT A TIME WHEN I CANNOT COME?**

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You can make a written request to have the date changed. Be sure to state why you cannot have the hearing on that date. The AHC does not often grant such requests, so the reason has to be very important.

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**6. WHAT IS REQUIRED WHEN I WRITE TO THE AHC?**

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Any time you write to the AHC, state your case name and number. Also, you are required to send to the attorney for the opposing State agency a copy of anything you send to us. The attorney is required to do the same for you.

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**7. HOW WILL THE AHC AND THE STATE AGENCY NOTIFY ME OF WHAT IS HAPPENING IN THE CASE?**

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The AHC will notify you of the hearing date, its rulings and other matters by mail. The attorney for the State agency involved will send you by mail copies of anything sent to the AHC. Therefore, it is important to provide the AHC and the agency attorney with your current address and telephone number and to promptly notify the AHC and the agency attorney of any changes. You could lose your case if certain notices or other mailings do not get to you.

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## **8. WHAT HAPPENS IF THE AGENCY SENDS ME DISCOVERY?**

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The State agency may send you interrogatories, requests for production of documents, requests for admissions or notices of deposition. These procedures are for discovery of the facts in the case, and are allowed by the AHC rules and the Missouri Supreme Court rules. Be especially careful about responding to a “request for admissions.” If you fail to answer or object within 30 days of the time it was mailed to you, your failure is taken as an admission of the facts set forth in the request, and you will not be allowed to introduce contrary evidence at the hearing. In other words, you could lose your case if you ignore any discovery request and particularly if you ignore a request for admissions. You may also send discovery requests to the State agency.

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## **9. WHERE CAN I FIND COPIES OF PREVIOUS DECISIONS?**

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Copies of AHC decision in previous cases may be found on the AHC’s Web site, [www.oa.mo.gov/ahc](http://www.oa.mo.gov/ahc). The cases are indexed by case suffix, which indicate the type of case. It may be helpful to you to see how the AHC has decided other cases that are similar to yours.

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## **10. WHAT TAKES PLACE AT THE HEARING?**

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If a hearing is necessary, it is usually held in an AHC hearing room in the Truman State Office Building, Jefferson City, Missouri. You are expected to appear and present your case based

upon evidence admitted at the hearing and also respond to the evidence presented by the agency.

The hearing resembles a trial in a courtroom except that there is no jury. However, the commissioner will make every effort to assist you with the procedure you are to follow. All witnesses will be sworn and their testimony taken down by the AHC hearing reporter. The evidence received at the hearing will be the sole basis for the decision.

**Burden of proof.** In most cases when you are the petitioner, you have the responsibility to convince the commissioner that you should win. This means you have the “burden of proof.”

An exception to this rule is when you are the petitioner in a case in which an agency is trying to suspend or revoke a license, such as a liquor license or a Bureau of Narcotics and Dangerous Drugs (“BNDD”) license. In those cases, the agency must convince the commissioner that the charged violations have occurred.

The AHC rules allow the commissioner the discretion to have the State present its case first.

**Exhibits.** If there are items, such as letters or records, that you want to have admitted into evidence, please remember that these may be required to be left with the AHC. Therefore, make copies before you come to the hearing. You will also need a copy for the State’s attorney.

**Can I be a witness?** Yes. If you testify, you should take the witness stand and tell your story in a simple, direct way so that the commissioner can understand just what the points of controversy are. The attorney for the agency can then ask you questions (cross examination). Before testifying, you, like all other witnesses, must take an oath to tell the truth. If you do not want to take an oath, you must affirm that you will be truthful.

**Can I use affidavits at the hearing?** An affidavit is a written statement which has been sworn to and signed before a notary public. If you offer an affidavit into evidence, there is a possibility that the State’s attorney will object. You may wish to contact the State’s attorney before the hearing and see if the attorney has any objection to the use of the affidavit.

**Can I object to the agency's evidence?** During the presentation of evidence, either side may object to the other's evidence on the basis that it does not meet the rules required for it to be considered as evidence. Normally, neither side can object just because it disagrees with the truth of what is being said. The commissioner will rule on these matters.

**Written arguments after the hearing.** At the end of the hearing, the commissioner will ask each side how much time it wants to submit written arguments (called "briefs"). While you have a right to submit a brief to the commissioner, you are not required to submit one. Except in extraordinary circumstances, once the hearing is adjourned you are not allowed to submit any additional evidence – only written arguments based on the evidence presented at the hearing.

**Transcripts.** After the hearing, the court reporter will need some time to prepare the transcript. The AHC will send you a letter when the transcript is ready and will tell you how much it will cost if you want to purchase a copy of the transcript.

**How do I get the final decision?** The decision rendered by the commissioner will be in writing and will set forth the facts found to be true and the law which is applicable to those facts. A copy of the decision is mailed to each party.

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## **11. DO I HAVE THE RIGHT TO APPEAL IF THE AHC RULES AGAINST ME?**

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Yes. Normally appeals must be filed with the correct court within 30 days of the date of the AHC decision. Which court you must appeal to and how the appeal must be taken depends on the kind of case you have. You should consult an attorney or read the statutes yourself to find out as quickly as possible after the AHC decision has been issued. Once the 30-day period has passed, you have lost the right to appeal.